

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT MITCHELL,

Plaintiff,

v

JUDGE : Zatkoff, Lawrence P.
DECK : S. Division Civil Deck
DATE : 09/27/2005 @ 15:37:53
CASE NUMBER : 2:05CV73698
CMP MITCHELL V. WAYNE COUNTY ET
AL (DA) SICOUNTY OF WAYNE, KAREN KREYGER, and
HAROLD CURETON,

Defendants.

LAWRENCE J. DEBRINCAT (P43338)
DeBrincat and Padgett
Attorney for Plaintiff
34705 W. Twelve Mile Road, Suite 311
Farmington Hills, Michigan 48331
(248) 848-7878

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff Robert Mitchell, by and through his attorney, Lawrence J. DeBrincat, and for his Complaint states as follows:

COUNT I

1. This is an action for violations of the Family Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 et seq.
2. This Court has jurisdiction pursuant to 28 U.S.C. 1331.
3. Plaintiff is a citizen of the United States in the state of Michigan and resides in Trenton, Michigan.
4. Defendant Wayne County is a public body which is located in and operates out of Wayne County, Michigan.

5. Defendant Karen Kreyger was at all relevant times herein a commanding officer for Defendant Wayne County and acted as an agent for the County with respect to her actions and decisions related to Plaintiff's employment.

6. Defendant Harold Cureton was at all relevant times the Undersheriff of Wayne County and acted as an agent for the County with respect to his actions and decisions related to Plaintiffs employment.

7. Plaintiff is an eligible employee as defined by the FMLA.

8. Defendants are employers as defined by the FMLA.

9. The events giving rise to the cause of action occurred within the County of Wayne, Michigan.

10. Plaintiff was employed as an officer by Defendant from 1993 to April 2005.

11. On or about July, 2004 Plaintiff suffered a severe back injury which required a leave of absence from his employment with the County.

12. On or about October, 2004, Plaintiff reinjured his back and was again forced to take leave from his employment with the County due to his back.

13. On or about February 22, 2005, Plaintiff slipped and fell on the steps of his residence, landing on his back and re-aggravating his severe back injury.

14. That as a result of this injury, Plaintiff was virtually unable to move and was determined to be incapacitated.

15. That, as a further result, Plaintiff was required to take medical leave from his employment with the County.

16. On February 23, 2005, Plaintiff notified his employer of his need to take time off for treatment and care for this serious health condition.

17. Plaintiff submitted a request for Family Medical Leave Act leave with the County.

18. The medical documentation in support of his request for leave indicated that Officer Mitchell was incapacitated.

19. Defendant Wayne County approved Plaintiff's leave request for the period of February 23, 2005 through March 14, 2005.

20. On or about March 7, 2005, Plaintiff was notified, through Defendant Karen Kreyger of the Wayne County Sheriff's Department, that a conduct incident report would be issued against him for his failure to appear for a random drug test on February 23, 2005.

21. Defendant Kreyger made the decision to and, in fact did, relieve Plaintiff of all of his police powers and had his badge and gun taken from him on or about March 7, 2005.

22. On or about March 14, 2005, Plaintiff's back condition had not sufficiently improved to permit him to return to work.

23. On or about March 14, 2005, Plaintiff submitted a request for an extension of his medical leave due to his back injury.

24. Plaintiff's requested extension was for the period of March 14, 2005 through March 23, 2005.

25. Plaintiff submitted an extension request along with medical documentation

supporting his request for an extension.

26. Plaintiff's request for an extension of leave was approved by the employer.
27. Plaintiff returned to work on or about March 24, 2005.
28. Upon his return to work, Defendant Kreyger placed Plaintiff on suspension pending an investigation for failing to appear for a drug test on February 23, 2005.
29. An administrative review hearing took place on our about April 1, 2005, regarding the status of Plaintiff's employment.
30. On or about April 1, 2005, Defendants Cureton and Kreyger terminated Plaintiff's employment allegedly for failing to appear for a drug test on February 23, 2005.
31. In failing to restore Plaintiff to his previous position, or an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment upon his return from leave, Defendants violated Plaintiff's rights under FMLA, 29 U.S.C. 2601 et seq.
32. Defendants have interfered with Plaintiff's rights under the FMLA and have retaliated against Plaintiff for exercising his rights under the Act.
33. That Defendants' actions herein are a violation of FMLA 29 U.S.C. 2601 et seq.
34. As a direct approximate result of Defendants' actions, Plaintiff has suffered lost wages, benefits, and loss of employment opportunities.

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

I. Legal Relief.

- a. Compensatory damages in whatever amount he is found to be entitled.
- b. Liquidated damages in whatever amount he is found to be entitled.
- c. An award of interest, costs, and reasonable attorney's fees and expert witness fees.

II. Equitable Relief.

- a. An order reinstating Plaintiff to an appropriate position with Defendant.
- b. An injunction prohibiting any further action, wrongdoing, discrimination, or retaliation.
- c. Whatever other equitable relief appears appropriate at the time of final judgment.

COUNT II

35. Plaintiff restates the allegations contained in paragraphs 1 through 24 as if fully stated herein.

36. At all material times Plaintiff performed his job duties in a manner that were satisfactory or better.

37. Plaintiff has a history of severe back problems which have for extended periods severely limited his mobility.

38. That Defendant was aware of the back injuries sustained by Plaintiff and the persistent problems Plaintiff was experiencing as a result.

39. Plaintiff has a disability for purposes of MCL 37.1103.
40. That at all relevant times Defendants were Employers under MCL 37.1201.
41. On or about February 23, 2005, Defendant was aware of Plaintiff's disability.
42. As a result of this disability, Plaintiff required leave of his employment from February 23 through March 23, 2005.
43. On February 22, 2005, Defendant issued a notice to Plaintiff to be drug tested on February 23, 2005.
44. Due to Plaintiff's disability, Plaintiff was unable to appear for the scheduled drug test on February 23, 2005.
45. Defendants failed to accommodate Plaintiff's inability to appear for the drug test of February 23, 2005.
46. Rather than accommodate Plaintiff as required under MCL 37.1101 et seq., Defendants terminated Plaintiff's employment on or about April 1, 2005.
47. That said termination of Plaintiff's employment is a violation of the Persons With Disabilities Civil Rights Act, MCL 31.1101, et seq.
48. Defendants' actions herein constitute retaliation against and interference with Plaintiff's rights under the Persons With Disabilities Civil Rights Act, MCL 37.1101, et seq.
49. Plaintiff was discriminated against within the meaning of the Persons With Disabilities Civil Rights Act when Defendant terminated Plaintiff's employment because of his disability.
50. Plaintiff's disability was the determining factor in Defendant's decision to terminate Plaintiff and preclude him from returning to work.

51. The actions of Defendants and their agents, representatives and employees were an intentional disregard for the rights and sensibilities of Plaintiff.

52. As a direct and proximate result of Defendants' unlawful discrimination, retaliation, and interference, Plaintiff has sustained injuries, included the loss of earnings and earning capacity; loss of fringe and pension benefits; mental and emotional distress; humiliation and embarrassment; loss of career opportunities; and loss of the ordinary pleasures of every day life, including the right to seek and pursue a gainful occupation of choice.

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

I. Legal Relief.

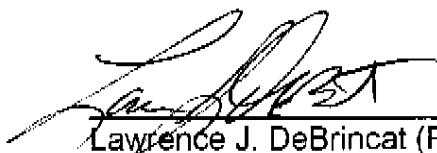
- a. Compensatory damages in whatever amount that Plaintiff is found to be entitled.
- b. An award of back pay and the value of lost fringe benefits and pension benefits, past and future.
- c. Exemplary damages whatever amount Plaintiff is found to be entitled.
- d. An award of interests, costs, and reasonable attorney's fees.

II. Equitable Relief.

- a. An order placing Plaintiff in the position he would have held had their been no violation of his rights.
- b. An award of interest, costs, and reasonable attorney's fees.
- c. An ordering enjoining Defendants from further acts of discrimination and retaliation.
- d. Whatever other relief appears appropriate at the time of final judgment.

e. Whatever other relief may appear appropriate when this Court's final order is entered.

Respectfully submitted,



Lawrence J. DeBrincat (P43338)

DeBrincat and Padgett

Attorney for Plaintiff

34705 W. Twelve Mile Road, Suite 311

Farmington Hills, Michigan 48331

(248) 848-7878

Dated: September 26, 2005

JURY DEMAND

Plaintiff hereby requests a trial by jury in this matter.

Respectfully submitted,



Lawrence J. DeBrincat (P43338)

DeBrincat and Padgett

Attorney for Plaintiff

34705 W. Twelve Mile Road, Suite 311

Farmington Hills, Michigan 48331

(248) 848-7878

Dated: September 26, 2005

CIVIL COVER SHEET County in which this action arose WAYNE

Civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1973, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

05-73698

I. (a) PLAINTIFFS

ROBERT MITCHELL.

(b) County of Residence of First Listed Plaintiff WAYNE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
LAWRENCE J. DEBRINCAT, DEBRINCAT AND PADGETT
34705 W. 12 MILE ROAD, SUITE 311, FARMINGTON HILLS, MI 48331
(248) 848-7878

II. BASIS OF JURISDICTION (Select One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Torts Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury + Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Apprendi 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
	CIVIL RIGHTS <input type="checkbox"/> 411 Voting <input checked="" type="checkbox"/> 412 Employment <input type="checkbox"/> 413 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railwy Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 740 Railwy Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Select One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
FAMILY MEDICAL LEAVE ACT, 29 U.S.C. 2601, ET SEQ.

Brief description of cause:
UNLAWFUL TERMINATION.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \$100,000+reinstatement **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE:

September 27, 2005

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

APPLYING IFP

JUDGE

MAG. JUDGE

RECEIPT #

AMOUNT

ANSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes

No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes

No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
